IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9436 OF 2005

Shri Ramchandra Sopanrao Karle
and Ors. ....Petitioners.

V/s

The State of Maharashtra & Anr. ....Respondent.

Mr. P.S. Dani for Petitioners.

Mr. A.H. Palekar, AGP for Respondent No.1.

Mrs. Madhavi S. Nalavade i/b K.V. Tembe for Respondent No.2.

CORAM: V.M. KANADE, J.
DATE : 8th March, 2007

P.C.:

1. Heard the learned Counsel for the Petitioners, the learned AGP for Respondent No.1 - State and the learned Counsel for Respondent No.2.

2. Rule.

3. By consent of parties, rule is made returnable forthwith. Respondents waive service.

4. Brief facts are as under:-

5. Petitioners are challenging the order passed by the

Maharashtra Revenue Tribunal (For short “MRT”) in Review Application No. MRT-P-IX-6/98 (Review) (C-16/98) dated 21st March, 2000 and also judgment and order passed by the MRT dated 3rd January, 1998 in Revision Application No.MRT.P.V.10/93 (B-120/93). The land in question was initially purchased by Respondent No.2 from one Damu Rama Dohiphode by a registered sale deed dated 20th November, 1971. Thereafter, a mutation entry was made to record the said fact of execution of sale deed and the said mutation entry No.263 was certified, subject to inquiry under section 84-C of the Bombay Tenancy and Agricultural Lands Act. Thereafter, for a period of almost 17 years, no proceedings were initiated under the provisions of section 84-C of the said Act and, some time in 1988, the Additional Tahsildar and Tenancy Awal Karkun initiated proceedings bearing No.497 of 1988. In these proceedings, a finding was recorded that since the land in question was not an agricultural land, the question of initiating proceedings under section 84-C would not arise and, therefore, the Tahsildar, by a reasoned order, dropped the said proceedings by his order dated 23rd May, 1988. After the said order was passed, the Assistant Collector, Pune took up the said matter suo motu in revision. Notice was issued to Respondent No.2. However, Respondent No.2 was not residing at village Dhonaje and, in fact, had, in the meantime, sold the said land in favour of Shri Vishnu P. Palande and Dnyanoba Shankar Dhamale by a registered sale deed dated 18th July, 1988 and the mutation entry also has been made to give effect to the said sale deed

being mutation entry No.406. The land, thereafter, was further sold in favour of the present Petitioners by Shri Vishnu P. Palande and Dnyanoba Shankar Dhamale by sale deed dated 13th January, 1989. No notice was served upon the present Petitioners after the suo motu revision was entertained by the Assistant Collector and he, by his judgment and order dated 26th February 1993, allowed the revision and set aside the order of ALT dated 23rd May, 1988 and further directed that the land should be resumed under section 84-C in favour of the Government.

6. Petitioners challenged this order before the MRT. However, the Revisional Court dismissed the Revision by its judgment and order dated 3rd January, 1998. A review Petition was filed before the MRT. However, Review Petition was also dismissed. It is submitted by the learned Counsel appearing on behalf of the Petitioners that the said transaction having been completed in 1971, it was not open for the Tahsildar/ALT to initiate proceedings under section 84-C after a lapse of 17 years. Mr. Dani submitted that the said proceedings, therefore, was patently illegal. He submitted that, in any case, the ALT, after having initiated the proceedings, had dropped the proceedings under section 84-C after coming to the conclusion that the said land was not an agricultural land. He submitted that the proceedings having been dropped, it was not open for the Assistant Collector to suo motu reopen the proceedings and pass an order without giving notice to the present petitioners and

their predecessors in title in a suit property. He relied upon the judgment of the Supreme Court in the case of **Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim,** reported in **(1997) 6 SCC 71.** He submitted that the Apex Court in the said case had held that suo motu inquiry by Mamlatdar under section 84-C could be initiated within a reasonable time. In the said case, sale of land had taken place in December, 1972 and suo motu inquiry was started in September, 1973. In the facts of the said case, the Supreme Court observed that the suo motu power under section 84-C was not exercised within a reasonable time and, on that ground, set aside the said order. He submitted that the ratio of the said judgment squarely applies to the fats of the present case. He submitted that this Court in the case of **Smt. Radhabai Balkrishna Deshpande & Anr. Vs. Shri Babu Dhondu Shewale & Ors.** reported in **2000(4) ALL MR 120,** has also reiterated the said ratio which was laid down in the said judgment.

7. The learned AGP appearing on behalf of Respondent No.1 - State was not in a position to give any explanation regarding the delay which was caused in initiating proceedings under section 84-C.

8. Considering the delay in initiating proceedings under section 84-C, suo motu proceedings were not initiated within a reasonable time. The ratio of the judgment in the case of Mohamad Kavi Mohamad Amin (supra), referred to above, is squarely applicable to the facts of the present case. In any

event, ALT had, after having initiated proceedings after 17 years, dropped the proceedings by giving a finding that the said land was not an agricultural land. In these facts and circumstances, I am of the view that the impugned order passed by the Assistant Collector and confirmed by the MRT in revision and review is liable to be set aside.

9. Writ Petition is allowed. Rule is made absolute in terms of prayer clauses (a) & (b).

(V. M. KANADE, J.)